

STATE OF WEST VIRGINIA
WEST VIRGINIA SECURITIES COMMISSION
BEFORE THE SECURITIES COMMISSIONER
CHARLESTON, WV 25305

ORDER NO.99-1245

ORDER APPROVING PROCEDURES FOR IMPLEMENTATION
OF NOTICE FILING BY THOSE ENGAGED IN COMMODITIES
TRANSACTIONS

Pursuant to the authority granted to him by Chapter 32B of the West Virginia Code, 1999 as amended ("the West Virginia Commodities Act", hereinafter referred to as the "Act"), and particularly Chapter 32B, Article 3, Section 1 of the Act, the Commissioner of Securities (hereinafter referred to as the "Commissioner") is of the opinion and finds as follows:

FINDINGS OF FACT

1. The Act provides that a "Commodity broker-dealer" and "Commodity sales representative" **shall provide notice** to the Commissioner on a form prescribed by the Commissioner that they are doing business in sales, offers or other nonexempt transactions involving sales of commodities.
2. Neither the Act nor existing regulation provides a method for implementing the notice filing by a "Commodity broker-dealer" or a "Commodity sales representative".
3. The Commissioner finds that this Order is necessary, appropriate and in the public interest.

CONCLUSIONS OF LAW

4. Chapter 32B, Article 3, Section 1 (c) of the Act provides that a "Commodity broker-dealer" and a "Commodity sales representative" **shall provide notice** to the Commissioner on a form prescribed by the Commissioner that they are doing business in sales, offers or other nonexempt transactions involving sales of commodities.

5. Chapter 32B, Article 3, Section 1 (d) of the Act provides a notice does not constitute the granting of a license, registration or other authorization to do business under this chapter but is to be maintained as a record of those engaged in commodities transactions in the state.

6. This Order is necessary or appropriate in the public interest or for the protection of investors; and is consistent with the purposes fairly intended by the policy and provisions of chapter 32B.

NOW THEREFORE IT IS HEREBY ORDERED THAT:

7. Any person engaged in the business of effecting nonexempt transactions in commodity contracts or commodity options, ("Commodity broker-dealer") as defined in the Act, for the account of others or for the person's own account; or any person authorized to act and that is acting for a Commodity broker-dealer in effecting or attempting to effect a nonexempt transaction in a commodity contract or a commodity option ("Commodity sales representative") as defined in the Act, shall file notice as prescribed in subsections 9 and 10 below, with the Commissioner at its Division of Securities or such other entity designated by the Commissioner.

8. The notice filing as a "Commodity broker-dealer" shall be deemed incomplete unless the following executed forms, and information are submitted.

(A) Form BD "Uniform Application For Broker-Dealer Registration".

(B) Form U-2 "Consent To Service Of Process".

9. The notice filing as a "Commodity sales representative" shall be deemed incomplete unless the following executed form and information are submitted.

(C) Form U-4 "Uniform Application For Securities Industry Registration Or Transfer".

10. Every notice filing shall specify any adverse order, judgment or decree entered in connection with notice filer by the regulatory authorities in each state or by any court or the Commodity Futures Trading Commission or the Securities and Exchange Commission.

11. Every notice filing shall automatically expire annually at midnight on the 31st day of December, unless renewed.

12. A renewal of notice filing shall be deemed incomplete unless executed forms and information are submitted.

(D) Pages 1 and 2 of Form BD in the case of a "Commodity broker-dealer".

(E) Pages 3 and 4 of Form U-4 in the case of a "Commodity sales representative".

13. Reporting requirements, updates and amendments. Each "Commodity broker-dealer" and "Commodity sales representative" shall file all changes in the information included in **Form BD** and **Form U-4** within fifteen (15) days after the change occurs; including a copy of any complaint related to business, transactions or operations in this State, naming the "Commodity broker-dealer " or "Commodity sales representative" as a defendant in any civil or criminal proceeding, or any administrative or disciplinary proceeding by any public or private agency, shall be filed within twenty (20) days of the date the complaint is served, and within ten days of the date the answer or reply is filed; and a copy of any decision, order or sanction made with respect to any proceeding within twenty (20) days of the date the decision, order or sanction is rendered.

14. Termination of notice filing. When a "Commodity broker-dealer" desires to terminate its notice filing, it shall file a written request for such termination or may file a **Form BDW** (Uniform Request for Broker-Dealer Withdrawal) in lieu of a written request. A "Commodity sales representative" shall file a **Form U-5** (Uniform Termination Notice) within ten (10) days of the termination.

15. The notice filing of a "Commodity sales representative" is not effective during any period when the "Commodity broker-dealer"

which the person represents has not filed proper notice or during any period in which the representative is not employed by a specified "Commodity broker-dealer" under Chapter 32B of the Code of West Virginia.

16. The notice does not constitute the granting of a license, registration or other authorization to do business under this chapter, but is to be maintained as a record of those engaged in commodities transactions in the state.

17. This Order shall remain in effect until modified or vacated by the Commissioner.

Entered this 31st day of July, 1999.

Glen B. Gainer III
Commissioner of Securities

By: Chester F. Thompson
Deputy Commissioner of Securities